



**CITY OF LODI
COUNCIL COMMUNICATION**

AGENDA TITLE: Adopt Resolution Authorizing the City Manager to Execute the Direct Payment Program Agreement with the State of California Department of Community Services and Development for the Term of July 1, 2006 through June 30, 2009

MEETING DATE: June 21, 2006

PREPARED BY: Interim Finance Director

RECOMMENDED ACTION: That the City Council adopt a resolution authorizing the City Manager, or his designee, to execute the direct payment program agreement with the State of California, Department of Community Services and Development for the term of July 1, 2006 through June 30, 2009.

BACKGROUND INFORMATION: The LIHEAP (low-Income Home Energy Assistance Program) is designed to provide assistance to qualified customers once a year or as a crisis intervention action. As a crisis intervention action, this program is crucial to customers who need help paying their utility bills, as otherwise they may suffer termination of service for non-payment.

Routinely the State of California, Department of Community Services and Development (CSD) issues an agreement to be jointly signed by CSD and the City of Lodi to provide for LIHEAP disbursements on behalf of City of Lodi energy customers. The State CSD is now requiring that a resolution of the local governing body accompany the signed agreement. This resolution will complete the requirements to the agreement for the term of July 1, 2006 through June 30, 2009.

FUNDING AVAILABLE: None required

Ruby R. Paiste

Ruby R. Paiste, Interim Finance Director

RRP/kb

Attachments

APPROVED:

James R. King

Blair King, City Manager

City of Lodi
Direct Payment Agreement
Agreement No. 06-1310

STATE OF CALIFORNIA
AGREEMENT

This Agreement consists of this signature page, Exhibits A through F, and Attachments I through IV, which are attached hereto and incorporated herein by this reference. It is entered into between the State of California, **Department of Community Services and Development**, and the Utility Company, **City of Lodi**:

Utility Company:
The term of this Agreement is:
The maximum amount of this Agreement is:

City of Lodi
July 1, 2006 through June 30, 2009
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Agreed to and approved:

CONTRACTOR

City of Lodi

By:

Authorized Signature

Date Signed

APPROVED AS TO FORM

Blair King, City Manager

Printed Name and Title of Person Signing

D. Stephen Schwabauer, City Attorney
221 W. Pine St., P O Box 3006

Address: **ATTEST:**

Lodi, CA 95241-1910

Jennifer M. Perrin
Interim City Clerk

Telephone:

(209) 333-6700

Facsimile:

(209) 333-6807

STATE OF CALIFORNIA

Department of Community Services and
Development

By:

Authorized Signature

Date Signed

Richard J. Bueche, Chief of Fiscal Operations

Printed Name and Title of Person Signing

Address:

700 North Tenth Street
Sacramento, California 95814-0338

Telephone:

(916) 341-4200

Facsimile:

(916) 341-4213

Exhibit A

SCOPE OF WORK

1. The purpose of this Agreement between the Department of Community Services and Development, hereinafter referred to as CSD, and the **City of Lodi**, hereinafter referred to as Contractor, is for the purpose of making direct credit to the accounts of low-income energy customers of the Contractor that are identified by CSD as payment recipients under CSD's Low-Income Home Energy Assistance Program (LIHEAP), which includes the Home Energy Assistance Program (HEAP) and Energy Crisis Intervention Program – Fast Track (ECIP-FT).

2. Location Where Services Are To Be Provided

Unless specified in writing, in advance, by CSD, the location of all services to be provided by CSD under this Agreement will be at:

Department of Community Services and Development
Program Services and Support Unit
700 North Tenth Street, Room 258
Sacramento, California 95814

3. Addresses

All notices to the parties shall, unless otherwise requested in writing, be sent to Contractor's address as follows:

Name and Title: James R. Krueger, Deputy City Manager

Company name: City of Lodi

Address: 221 W. Pine St., P O Box 3006

City, State and Zip Code: Lodi, CA 95241-1910

or by facsimile to (209) 333-6807

and to CSD's address as follows:

Sukie Godinez, Manager
Department of Community Services and Development
700 North 10th Street, Room 258
Sacramento, California 95814-0338
or by facsimile to (916) 341-4285.

Exhibit B

BUDGET DETAIL AND PAYMENT PROVISIONS1. Payment

Contractor will not receive any direct financial consideration under this Agreement.

2. CSD's Project Manager

The Manager of the Energy and Environmental Services is designated as the Department's Project Coordinator. The Department may, at any time, designate a substitute Project Coordinator.

3. Contractor's Project Coordinator

RUBY PAISTE is designated as the Contractor's Project Coordinator. The Contractor may, at any time, designate a substitute Project Coordinator. Notification to CSD of any change in the Project Coordinator will be made in writing and will not require an amendment to this agreement.

4. Budget Contingency Clause

- A. It is mutually agreed that if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the program, this Agreement shall be of no further force and effect. In this event, CSD shall have no liability to pay any funds whatsoever to Contractor or to furnish any other considerations under this Agreement and Contractor shall not be obligated to perform any provisions of this Agreement.
- B. If funding for any fiscal year is reduced or deleted by the State of California Budget Act for purposes of this program, the CSD shall have the option to either cancel this Agreement with no liability occurring to the CSD, or offer an agreement amendment to Contractor to reflect the reduced amount.
- C. Notwithstanding the language in Sections 5.A. or 5.B. below, if CSD believes that funds will be insufficient to allow the State to make LIHEAP payments to Contractor i.e., for the reasons described in Section 5.A. or 5.B. below, then CSD shall promptly notify Contractor's Project Coordinator. The CSD and Project Coordinator shall attempt to amend this Agreement so the LIHEAP payments can continue to the extent possible given the nature of the shortage or unavailability of funding for LIHEAP. The parties agree that it is undesirable to terminate this Agreement for any short-term unavailability of LIHEAP funds and that it would be preferable, if Federal funds are not available for LIHEAP, to suspend LIHEAP until CSD is able to obtain sufficient funding to resume credits to qualified low-income energy customers, as provided for under LIHEAP.

Exhibit B

5. Provisions for Federally Funded Contracts

- A. It is mutually understood between the parties that this contract may have been written for the mutual benefit of both parties before ascertaining the availability of congressional appropriation of funds, to avoid program and fiscal delays that would occur if the contract were executed after that determination was made.
- B. This contract is valid and enforceable only if sufficient funds are made available to the CSD by the United States Government for the purpose of this program. In addition, this contract is subject to any additional restrictions, limitations, or conditions enacted by the Congress or to any statute enacted by the Congress that may affect the provisions, terms, or funding of this contract in any manner.
- C. The parties mutually agree that if Congress does not appropriate sufficient funds for LIHEAP, this contract shall be amended to reflect any reduction in funds.
- D. CSD has the option to void the contract under the 30-day cancellation clause or to amend the contract to reflect any reduction for funds.
- E. CSD will notify Contractor's Project Coordinator if federal funds are insufficient for LIHEAP to continue as expected during the next fiscal year or if restrictions, limitations or conditions have been imposed by Congress on the LIHEAP or funding for it as soon as the Federal grant award letter has been issued with some constraint. CSD further agrees that Contractor's willingness to suspend the LIHEAP, as described herein and in Section 5.C. above, does not constitute an agreement by Contractor that: (i) funding for LIHEAP is unimportant or (ii) a delay in crediting a customer with LIHEAP funds is acceptable, to either Contractor or its customers.

EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. Approval

This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required.

2. Amendment

No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.

3. Assignment

This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.

4. Audit

The agency performing work under this Agreement agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement if it exceeds \$10,000. The agency performing work agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of record retention is stipulated. The agency performing work under this Agreement agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the agency performing work under this Agreement agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, PCC 10115 et seq., CCR Title 2, Section 1896)

5. Indemnification

Each party is responsible for its own acts, omissions, conduct, and failure to act in the performance of this Agreement.

6. Disputes

The agency performing the work under this Agreement shall continue with the responsibilities under this Agreement during any dispute.

EXHIBIT C

7. Termination for Cause

The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. Independent Contractor

Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. Nondiscrimination Clause

During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

10. Timeliness

Time is of the essence in this Agreement.

11. Compensation

The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

EXHIBIT C

12. Governing Law

This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

13. Child Support Compliance Act

For any Agreement in excess of \$100,000, the agency performing work under this Agreement acknowledges in accordance with Public Contract Code 7110, that:

- a) The agency performing work under this Agreement recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- b) The agency performing work under this Agreement, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

14. Unenforceable Provision

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

15. Union Activities

For all contracts, except fixed price contracts of \$50,000 or less, the agency performing work under this Agreement acknowledges that:

By signing this agreement the agency performing work under this Agreement hereby acknowledges the applicability of Government Code Section 16645 through Section 16649 to this Agreement and agrees to the following:

- a) The agency performing work under this Agreement will not assist, promote or deter union organizing by employees performing work on a state service contract, including a public works contract.
- b) No state funds received under this Agreement will be used to assist, promote or deter union organizing.
- c) The agency performing work under this Agreement will not, for any business conducted under this Agreement, use any state property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or

EXHIBIT C

deter union organizing, unless the state property is equally available to the general public for holding meetings.

- d) If the agency performing work under this Agreement incurs costs, or makes expenditures to assist, promote or deter union organizing, that agency will maintain records sufficient to show that no reimbursement from state funds has been sought for these costs, and that the agency shall provide those records to the Attorney General upon request.

EXHIBIT D

SPECIAL TERMS AND CONDITIONS

1. Cancellation

Either party may terminate this Agreement by giving thirty (30) day's prior written notice to the other party.

2. Subcontracts

No subcontracts shall be permitted under this Agreement; therefore, references to subcontractors or subcontracts as part of standard provisions that have been included herein shall have no applicability.

3. Expatriate Corporations

A. Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

B. An "expatriate corporation" means a foreign incorporated entity that is publicly traded in the United States to which all of the following apply (Public Contract Code, section 10286.1):

- 1) The United States is the principal market for the public trading of the foreign incorporated entity.
- 2) The foreign incorporated entity has no substantial business activities in the place of incorporation.
- 3) Either clause a. or clause b. applies:
 - a. The foreign entity was established in connection with a transaction or series of related transactions pursuant to which (I) the foreign entity directly or indirectly acquired substantially all of the properties held by a domestic corporation or all of the properties constituting a trade or business of a domestic partnership or related foreign partnership, and (II) immediately after the acquisition, more than 50 percent of the publicly traded stock, by vote or value, of the foreign entity is held by former shareholders of the domestic corporation or by former partners of the domestic partnership or related foreign partnership. For purposes of subclause (II), any stock sold in a public offering related to the transaction or a series of transactions is disregarded.

EXHIBIT D

- b. The foreign entity was established in connection with a transaction or series of related transactions pursuant to which (I) the foreign entity directly or indirectly acquired substantially all of the properties held by a domestic corporation or all of the properties constituting a trade or business of a domestic partnership or related foreign partnership, and (II) the acquiring foreign entity is more than 50 percent owned, by vote or value, by domestic shareholders or partners. (iii) For purposes of this subparagraph, indirect acquisition of property includes the acquisition of a stock share, or any portion thereof, of the owner of that property.

4. Domestic Partners

Commencing on July 1, 2004 Contractor certifies that it is in compliance with Public Contract Code section 10295.3 with regard to benefits for domestic partners. For any contracts executed or amended, bid packages advertised or made available, or sealed bids received on or after July 1 2004 and prior to January 1, 2007, a Contractor may require an employee to pay the costs of providing additional benefits that are offered to comply with PCC 10295.3.

5. Doing Business with the State of California

- A. The following laws apply to persons or entities doing business with the State of California:

Conflict of Interest: Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

- 1) Current State Employees (PCC 10410)
 - a. No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
 - b. No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.
- 2) Former State Employees (PCC 10411)
 - a. For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations,

EXHIBIT D

transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.

- b. For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

- B. If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (PCC 10420)
- C. Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (PCC 10430 (e))

6. Labor Code/Workers' Compensation

Both parties agree that they are aware of the provisions that require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and CSD affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

7. Americans with Disabilities Act

Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

8. Contractor Name Change

An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change, the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

9. Corporate Qualifications to do Business in California

- A. When Agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

EXHIBIT D

- B. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.
- C. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

10. Resolution

A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body that by law has authority to enter into an agreement, authorizing execution of the agreement.

11. Air Or Water Pollution Violation

Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

12. Compliance with Laws and Tax Withholding

- A. CSD shall comply with all applicable Federal, State, and local laws, rules, and regulations, and shall obtain all permits required to conduct its business and perform the work called for in this Agreement, if applicable.
- B. CSD represents and warrants that it will withhold all taxes, if any, which are required to be withheld under applicable laws with respect to CSD personnel who perform services for the Contractor. CSD shall indemnify and hold the Contractor harmless, on an after-tax basis, for any liability incurred by the Contractor as a result of CSD's failure to institute any such required withholding.

EXHIBIT E

ADDITIONAL PROVISIONS1. Independent Contractor

CSD, and the agents and employees of CSD, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of Contractor.

2. Delegation of CSD's Duties

This Agreement is not assignable by CSD, either in whole or in part, without the consent of Contractor in the form of a formal written amendment. CSD shall not employ other consultants or contractors to provide key data entry, document perfection, and/or any other services under this Agreement without the prior written approval of Contractor, nor shall the duties of CSD, under this Agreement, be delegated without prior written approval of Contractor. Unless otherwise expressly agreed upon by Contractor, CSD shall remain responsible for the quality and timeliness of performance notwithstanding any delegation.

3. Conflict of Interest/Business Ethics

CSD shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with Contractor's interest. During the term of this Agreement, CSD shall not accept any employment or engage in any consulting work that creates a conflict of interest with Contractor or in any way compromises the services to be performed under this Agreement. All financial statements, reports, billings, and other documents rendered shall properly reflect the facts about all activities and transactions handled for the account of Contractor.

4. Warranty

CSD warrants to Contractor that the work under this Agreement shall be performed with the degree of skill and care that is required by current, good and sound professional procedures and practices, and in conformance with generally accepted professional standards prevailing at the time the work is performed, so as to ensure that the services performed are correct and appropriate for the purposes contemplated in this Agreement and related specifications.

5. Confidentiality

- A. In the course of performing the services under this Agreement, CSD may have access to confidential, commercial, or personal information concerning, but not limited to, technology, rate making, legislative, and personnel matters and practices of the Contractor, its subsidiaries, affiliates, or members of the public. CSD agrees not to disclose any such information without the prior written approval of Contractor.

EXHIBIT E

- B. Contractor hereby agrees to provide required security to insure the confidential, physical security, and safekeeping of all data, information, files, and documents while in its possession. Through the observance of the same or more effective procedural requirements as used by CSD, Contractor will protect from unauthorized use and disclosure all sensitive data, documentation, or other information that are designated confidential by CSD and made available to Contractor in order to carry out this Agreement. CSD shall provide to Contractor in writing the identification of all such confidential data and information, as well as CSD procedural requirements for protection of such data and information from unauthorized use and disclosure.
- C. Any representation herein made by CSD relating to confidentiality or the operations, limitations, and requirements for the furnishing of personnel records, as set forth in Exhibit D, Additional Provisions, Section 6., CSD's Use of Contractor's Property, below shall be subject to the Information Practices Act of 1977, Section 1798 et seq. of the California Civil Code, and the California Public Records Act, Section 6250 et seq. of the California Government Code.

6. CSD's Use of Contractor's Property

All records, reports, computer programs, written procedures, and similar materials, documents or data, in whatever form provided by Contractor for CSD's use in performance of services under this Agreement, shall remain the confidential property of Contractor and shall be returned to Contractor immediately upon completion of CSD's use or upon written request of Contractor.

7. Availability of Information and Public Testimony

- A. Contractor's duly authorized representatives shall have, for the term of this Agreement and for two (2) years thereafter, access at all reasonable times, upon five (5) day's written notice and during regular working hours, to the CSD personnel, accounts, and records, including but not limited to applications processed and computer files for personnel who perform services for Contractor under this Agreement in order to verify or review the quantity, quality, work program and progress of the work, reimbursable costs, amounts claimed by CSD, estimates of cost for fixed rates, including those applicable to proposed changes, annual audit to verify recertification processes, and for any other reasonable purposes. The personnel records, accessible under this paragraph, shall be limited to timekeeping, expense, and other such public records.
- B. This provision shall apply to all Agreements except those performed solely on a lump-sum basis. However, where lump sum and time and materials work, i.e., unit price, reimbursable cost, fixed rates, are performed together, either as a part of this Agreement or as separate contract(s), then the above audit privilege shall also extend to Contractor for access to all CSD's records pertaining to all contracts including the lump sum for assurance that the portions of the work performed on a time-and-materials basis are not being charged with time,

EXHIBIT E

material, or other units or cost that are intended to be covered by lump sum or fixed rates, etc., provided herein, supplement hereto or in such other agreements.

- C. CSD accounts shall be kept in accordance with generally accepted accounting principles in the particular industry and shall be kept in such a manner and in sufficient detail to clearly disclose the nature and amounts of the different items of service and cost pertaining to this Agreement and the basis for charges or allocations to this Agreement.
- D. CSD shall preserve all such accounts and records for a period of two (2) years after the expiration of the term of this Agreement. Contractor's duly authorized representatives shall have the right to reproduce any such accounts and records. Contractor shall be responsible for the incremental cost, if any, of retention and retrieval of said records. CSD shall promptly adjust any inaccuracy in the billings.
- E. Access under this paragraph shall not extend the time for the taking of written exception to and the adjustments of accounts as provided for in Exhibit B, Budget Detail and Payment Provisions, Section 2. Compensation, A. Application Category Costs, item 1). CSD shall bear no portion of the Contractor's audit cost incurred under this paragraph unless agreed to by CSD.

8. Nonwaiver

The waiver by either party of any breach of any term, covenant, or condition contained in this Agreement, or any default in the performance of any obligations under this Agreement, shall not be deemed to be a waiver of any other breach or default of the same or any other term, covenant, condition or obligation; nor shall any waiver of any incident of breach or default constitute a continuing waiver of the same. All waivers should be in writing.

9. Prior Work

Services performed by CSD pursuant to Contractor's authorization, but before the execution of this contract, shall be considered as having been performed subject to the provisions of this contract.

10. Incidental and Consequential Damages

Contractor shall not be liable for incidental or consequential damages including, but not limited to, loss of profits, commitments to subcontractors, rental or lease agreement(s), and personal services contracts, unless expressly authorized in writing by Contractor.

EXHIBIT E

11. Insurance

CSD is a self-insured entity. If said coverage no longer prevails, CSD will notify Contractor within thirty (30) days of said coverage expiration.

12. Captions

The captions of the various sections, paragraphs, and subparagraphs are for convenience only and shall not be considered or referred to in resolving questions of interpretations.

13. Venue

In the event that suit shall be brought by either party to this Agreement, the parties agree that venue shall be exclusive vested in the State Courts of the County of Sacramento, or where otherwise appropriate, exclusively in the United States District Court, Eastern District of California, Sacramento, California.

14. Other Agreements

This Agreement shall not prevent either party from entering into similar agreements with others.

15. Dispute Resolution

- A. Unless otherwise mutually agreed to, any disputes between CSD and Contractor regarding the construction or application of this Agreement and claims arising out of this Agreement or its breach shall be submitted to mediation within thirty (30) calendar days of the written request of one party after the service of that request on the other party.
- B. The parties shall make best efforts to settle all disputes arising under this Agreement as a matter of normal business and without recourse to either mediation or litigation. If the parties are unable to resolve a dispute with respect to this Agreement, either party may send a notice to the other requesting a meeting at which senior officers or officials of the parties will attempt to resolve the dispute. If the parties are unable to resolve the dispute within ten (10) days after the meeting notice is received by the party to whom it is directed, or such longer period as the parties may agree, then either party may initiate mediation as set forth herein.
- C. Mediation under this section is a condition precedent to filing an action in any court. In the event of litigation that arises out of any dispute related to this Agreement, the parties shall each pay their respective attorney's fees, expert witness costs and cost of suit, regardless of the outcome the litigation.

EXHIBIT E

16. Additional Work

Before proceeding with any work involving possible claims for extra compensation not specified in this Agreement, CSD shall, upon receipt of a detailed description of services requested, submit in writing to the Contractor a detailed estimate for the cost for such work. CSD shall provide the Contractor with a detailed breakdown and estimated cost of anticipated work, including extensions and change orders, as follows:

- A. Description of work to be performed, including detailed breakdown of identifiable tasks;
- B. Estimated cost of each task; and
- C. Expected date of completion of each task.
- D. CSD shall not proceed with any such additional work prior to receiving written amendment to this Agreement, signed by both parties.

17. Federal Equal Opportunity Laws

During the performance of this Agreement, and to the extent they may be applicable to this Agreement, CSD agrees to comply with the following:

- A. Federal Executive Order 11246, as amended by Executive Order 11375 relating to equal employment opportunity;
- B. Title VI and Title VII of the Civil Rights Act of 1964; as amended;
- C. Rehabilitation Act of 1973, as amended;
- D. Vietnam Era Veterans Readjustment Assistance Act of 1972, as amended;
- E. Title 41, Code of Federal Regulations (CFR), Chapter 60, Office of Federal Contract Compliance Program, Equal Employment Opportunity, Department of Labor, as amended; and
- F. Public Law 101-336, Americans with Disability Act of 1990.

Exhibit F

PROGRAMMATIC PROVISIONS

1. A. CSD will process applications and make a determination of applicant's eligibility for assistance based upon preestablished criteria pursuant to the LIHEAP. CSD will provide the Contractor with a printout or transmittal (Attachment 2) which lists applicants determined eligible for assistance and the amount of assistance. Payment, in the form of a State of California warrant, and Direct Payment Summary (Attachment 3), shall accompany the printout, and shall represent the sum total of benefits contained on said transmittal.
- B. Contractor will process payments contained on aforementioned printout in accordance with the provisions of the enclosed LIHEAP Direct Payment Instructions (Attachment 1).
- C. Contractor will provide notification of LIHEAP payment to each customer for whom a credit is made. The wording of said notification must contain the words "LIHEAP credit."
- D. The contractor shall attempt to credit the accounts of qualified low-income customers by the subsequent billing cycle following the receipt of the transmittal and State of California warrant.
- E.
 - 1) Contractor is responsible for completing and returning to CSD, the Direct Payment Summary that accompanies each transmittal, within ten (10) working days of processing and handling the batch run of eligible low-income utility customers receiving LIHEAP assistance. Contractor shall complete the Direct Payment Summary by indicating: 1) the total number of customer accounts where the Contractor was successful in crediting full amount of eligible LIHEAP benefit; 2) the customer accounts where the Contractor was only able to credit a partial amount of the eligible LIHEAP benefit, also referred to as Partial Payment Return; and 3) the customer accounts where the Contractor was unable to credit any of the eligible LIHEAP assistance amount, also referred to as Full Payment Return.
 - 2) Contractor shall return any undeliverable LIHEAP benefits to CSD during the course of this Agreement.

2. Disbursements

Funds provided under this Agreement shall be disbursed and applicant accounts credited in accordance with the provisions of the LIHEAP Direct Payment Instructions.

3. Assurances

- A. Contractor shall charge the eligible household, in the normal billing process, the difference between the actual cost of the home energy and the payment amount

Exhibit F

made by the Department. The actual costs of the home energy shall be consistent with applicable utility company tariffs as approved by the CPUC.

- B. Contractor assures that no household receiving assistance under this process will be treated adversely because of such assistance under applicable provisions of State Law regarding public regulatory requirements.

4. Reports

Reports required under this Agreement are detailed in the LIHEAP Direct Payment Instructions and the attachments thereto.

Direct Payment

LIHEAP Direct Payment Instructions and Samples

- **Attachment 1 – Direct Payment Instructions**
- **Attachment 2 – Print out Report**
- **Attachment 3 – HEAP Direct Payment Summary**
- **Attachment 4 – Match/Error Criteria**

ATTACHMENT 1

LIHEAP DIRECT PAYMENT INSTRUCTIONS

HOW TO MAKE A MATCH

OPEN ACCOUNTS: If an applicant's utility account is open at the time a LIHEAP payment is received, the full amount of the payment can be applied even if it creates a credit to the account.

It is incumbent upon your company to match payments to the correct account and customer of record to which the LIHEAP applicant has directed the benefit. For this purpose, both the "Customer of Record" and last name of the LIHEAP applicant, "Applicant Last Name" has been provided, as well as an account number and service address.

CLOSED ACCOUNTS: If, at the time the LIHEAP benefit is to be applied, and the applicant's reported utility account is closed, you must select and complete one of the three options below:

- 1.) A match can be made with an applicant's new account within the same utility company.
- 2.) If the account is CLOSED with an outstanding balance owed, a partial payment can be made and the difference refunded to CSD with a notation on your printout.
- 3.) If the account is CLOSED with no outstanding balance, the total amount of LIHEAP benefit should be returned to CSD with a notation on your printout.

HOW TO NOTIFY CSD OF PARTIALS AND/OR NON-MATCHES

1.) **PRINTOUTS:**

- Copy the page of the printout upon which the LIHEAP applicant's name appears.
- Circle the name of the customer of record to whose account the partial payment was applied (See Attachment 2).
- Note beside the LIHEAP payment the amount that is being returned to CSD (the difference between the CSD payment and the returned amount is the amount which was credited to the customer of record). If there is a 100% refund to CSD, note the total LIHEAP payment amount.

- Provide an adding machine tape listing the total amount of money to be refunded to CSD. The tape should include both the individual amounts, as well as a total.
- Return the LIHEAP DIRECT PAYMENT SUMMARY SHEET, which accompanies each run of selected payment records, with the number of partials and/or non-matches (See Attachment 3).
- Attach a check made payable to CSD and return your printout (with partials/non-matches information), adding machine tape, and summary page to:

The Department of Community Services and Development
 Energy and Environmental Services
 700 North 10th Street
 Sacramento, California 95814

2.) Compact Disk (CD)/File Transfer Protocol (FTP)

- If you expect to return the "partial or non-match" information to CSD by CD or File Transfer Protocol (FTP), refer to Attachment 4 for more specific instructions on how to code the record.

WHAT IF ALL RECORDS ARE MATCHES

If you find that all records on a specific run are matches to your client database, you need to notify CSD on the LIHEAP Direct Payment Summary. In the case of a 100% match, the figure in the "Run \$ Total" column would be the same amount as the amount in the "Total \$ Match" column (Attachment 3).

ATTACHMENT 2

DATE: 05/03/2006

DEPARTMENT OF COMMUNITY SERVICES AND DEVELOPMENT
2006 HOME ENERGY ASSISTANCE PROGRAM
(Federally Funded Programs)

PAGE: 1

UTILITY COMPANY NAME
Pay Run on 05/03/2006

ACCOUNT NUMBER	PAY AMT	CUSTOMER OF RECORD	SERVICE ADDRESS	APPLICANT LAST NAME	DLN
4257809602625000003301	\$236.00	MELLISA CASTRO	2625 S MAIN ST LOS ANGELES, CA 95678	CASTRO	062780500001484
1099766500156000000401	\$294.00	LUIS ABUNDIZ	156 W 82 ST LOS ANGELES, CA 90003	ABUNDIZ	060630500002812

GRAND TOTAL: \$530.00

DEPARTMENT OF COMMUNITY SERVICES AND DEVELOPMENT

700 North 10th Street, Room 258
 Sacramento, CA 95814-0338
 (916) 341-4200
 (916) 341-4203 (FAX)
 (916) 327-6318 (TDD)



ATTACHMENT 3

2006 HEAP DIRECT PAYMENT SUMMARY

PLEASE COMPLETE FOR EACH DIRECT PAYMENT BATCH

CSD RUN DATE (THIS DATE IS ON THE TOP LEFT HAND CORNER OF THE PRINT- OUTS)	(A) TOTAL DOLLAR AMOUNT FROM CSD (THIS IS THE CHECK AMOUNT THAT WAS SENT WITH THIS RUN DATE NOTE: THIS AMOUNT SHOULD MATCH THE PRINT- OUT)	(B) TOTAL DOLLAR AMOUNT BEING RETURNED CSD (ENTER THE AMOUNT OF THE CHECK THAT WILL BE RETURNED TO CSD WITH THIS FORM)	(C) TOTAL NUMBER OF RECORDS BEING RETURNED TO CSD (ENTER THE NUMBER OF RECORDS THAT WILL BE RETURNED TO CSD WITH THIS FORM)	(D) TOTAL DOLLARS THAT MATCHED (THIS IS THE AMOUNT THAT YOU STARTED WITH, MINUS ANY RETURN DOLLARS, EQUALS TOTAL DOLLARS MATCHED A- B=D)
01/25/06				

COMPLETED BY: _____ PHONE: _____

UTILITY COMPANY: _____ DATE: _____

**PLEASE RETURN THIS SUMMARY SHEET WITH PRINT-OUTS AND CHECK (FOR NON-MATCHES)
NO LATER THAN 10 DAYS FOLLOWING RECEIPT FROM CSD**

PLEASE RETURN SUMMARY SHEET TO: **STELLA AVILA, ENERGY SERVICES**
HOME ENERGY ASSISTANCE PROGRAM
700 N 10TH STREET
SACRAMENTO, CA 95814

IF YOU HAVE ANY QUESTION PLEASE CONTACT
 STELLA AVILA (916) 341-4255

CSD Use ONLY

CHECK NUMBER		DATE RECEIVED SUMMARY		DATE SENT TO ITS	
\$ AMOUNT RETURNED					

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50
00HDR					ZH		File Date (YYMMDD)					File Time (HHMMSS)					Utility Initials					Blank Space																											
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51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100

Blank Space

101	102	103	104	105	106	107	108	109	110	111	112	113	114	115	116	117	118	119	120	121	122	123	124	125	126	127	128	129	130	131	132	133	134	135	136	137	138	139	140	141	142	143	144	145	146	147	148	149	150
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Last Name																				F i r s t	SSN										Bill Last Name																				F i r s t
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RESOLUTION NO. 2006-118

A RESOLUTION OF THE LODI CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE THE DIRECT PAYMENT PROGRAM AGREEMENT WITH THE STATE OF CALIFORNIA DEPARTMENT OF COMMUNITY SERVICES AND DEVELOPMENT FOR THE TERM OF JULY 1, 2006 THROUGH JUNE 30, 2009

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NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council does hereby approve the Direct Payment Program Agreement between the City of Lodi and the State of California Department of Community Services and Development; and

BE IT FURTHER RESOLVED that the Lodi City Council hereby authorizes the City Manager to execute the agreement on behalf of the City of Lodi; and

BE IT FURTHER RESOLVED that this agreement shall be in effect for the term July 1, 2006 through June 30, 2009.

Dated: June 21, 2006

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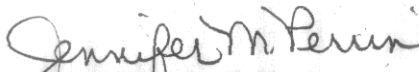
I hereby certify that Resolution No. 2006-118 was passed and adopted by the City Council of the City of Lodi in a regular meeting held June 21, 2006, by the following vote:

AYES: COUNCIL MEMBERS – Beckman, Hansen, Johnson, Mounce,
and Mayor Hitchcock

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None


JENNIFER M. PERRIN
Interim City Clerk

